

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

DIARRA JERMAINE BODDY #04808-088

*(Enter above the full name of the plaintiff
or plaintiffs in this action).*

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO. 2:15-cv-16026
(Number to be assigned by Court)

CITY OF CHARLESTON, WV (Ex-SPTLM. BRIAN A. LIGHTNER)

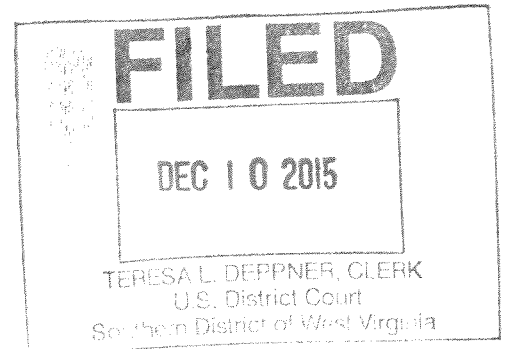
STATE OF WEST VIRGINIA

KANAWHA COUNTY MAGISTRATE HALLORAN

WV STATE PAROLE OFFICER JORDAN MCKINNLEY

*(Enter above the full name of the defendant
or defendants in this action)*

COMPLAINT



I. Previous Lawsuits

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes _____ No **xx** _____

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: **DIARRA JERMAINE BODDY**

Defendants: **BRIAN A. LIGHTNER,**

CITY OF CHARLESTON WV

CHARLESTON POLICE DEPARTMENT

2. Court (if federal court, name the district; if state court, name the county);

KANAWHA COUNTY CIRCUIT COURT JUDGE TABIT

(Related case is for excessive force, battery, tort etc)

3. Docket Number: **15-C-1704**

4. Name of judge to whom case was assigned:

Judge Joanna Talbit Kanawha County Circuit Court

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

Pending

6. Approximate date of filing lawsuit: **Sept. 9-2015**

7. Approximate date of disposition: **N/A**

II. Place of Present Confinement: United States Penitentiary McCreary

A. Is there a prisoner grievance procedure in this institution?

(Complaint is not prison related)

Yes XX No _____

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes _____ No XX (see above)

C. If you answer is YES:

1. What steps did you take? N/A

2. What was the result? N/A

D. If your answer is NO, explain why not: N/A

III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Diarra Jermaine Boddy #04808-088

Address: U.S.P. McCreary P.O. Box 3000 Pine Knot, KY 42635

B. Additional Plaintiff(s) and Address(es): N/A

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: City Of Charleston, WV (EX-Sptlm. Brian A. Lightner)

is employed as: Was Sr. Patrolman of Charleston Police Dept.

at Charleston Police Department, Charleston, WV

D. Additional defendants: State of West Virginia, Magistrate Halloran,

State Parole Officer Jordan McKinnley

Kanawha County Courthouse/Magistrate Court 111 Court St. Chas.WV

Wv State Parole Office, Plaza East Chas. WV

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Plaintiff, Diarra Jermaine Boddy was arrested on September 10, 2013
(cs. no. #13-F-2929, 2930)

for possession with intent to deliver a COUNTERFEIT substance and

the charge was dismissed on September 23, 2013 due to no appearance
of arresting officer. Plaintiff remained in jail due to a scheduled

parole violation hearing that was ultimately held on December 11, 2013

in which the WV Parole board found me NOT GUILTY of and ordered him

released to a 30 day rehabilitation program. Defendant's Brian Lightner

and Jordan McKinnley were both present at the hearing. Following

(violation of 5th, 6th & 8th amendment rights. retaliation/collusion...)
(false imprisonment/vindictive/malicious prosecution/due process)

IV. Statement of Claim (continued):

the revocation hearing, Ex-Officer Brian Lightner went and REFILED the very same charge (possession w/intent to deliver COUNTERFEIT) that had (Cs.No.13-F-3707) previously been dismissed before. Plaintiff was VIDEO ARRAIGNED at South Central Regional Jail by Magistrate Halloran and given excessive bail of \$25,000 cash only and told Plaintiff that "he had received a phone call and apparently the Feds wanted me for something, and that was why my bail was so high". Plaintiff was asked and also signed requests for appointment of counsel as well as a preliminary hearing. Plaintiff was then held in jail until January 17th 2014 WITHOUT APPOINTMENT OF COUNSEL or a preliminary hearing. This is a clear violation of Plaintiffs due process rights and also shows State and City officials colluded with Federal authorities to illegally detain Plaintiff in an attempt to stop him from being released from jail to obtain drug rehabilitation ordered by the WV State Parole Board. Plaintiff claims maliciousness and vindictive arrest and prosecution as well as false imprisonment/illegal detainment.

V. Relief

Plaintiff would like the State of West Virginia to amend the conviction of a prior state conviction for possession with intent to deliver a controlled substance that Plaintiff has already served the time for and the sentence has been disharged.(Case no. # 97F-31). This was a sentence of 1 to 15 years that was ran concurrent to a federal sentence of 5 years (USDC 2:95-00020) Plaintiff was arrested in 1994 and sentenced on 6-23-1997. Paroled on 9-16 1999, and discharged 7-01-2001. Plaintiff asks that this conviction be amended to reflect a sentence of 1 to 5 years as his relief in this complaint. Plaintiff also seeks compensatory damages for every day he was held in jail without counsel, preliminary hearing, or able to fulfill Parole boards order to complete inpatient rehabilitation. In the amount of \$30,000.

IV. Statement of Claim (continued):

See previous

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.
Cite no cases or statutes.

See previous

If so, state the lawyer's name and address:

Signed this _____ day of _____, 20____.

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

12/10/15
(Date)

Signature of Movant/Plaintiff

Signature of Attorney
(if any)

AFFIDAVIT OF DIARRA JERMAINE BODDY

STATE OF KENTUCKY }
 }
 }
 COUNTY OF MCCREARY } SS

I Diarra Boddy, being first duly sworn and deposed, do swear, under the penalty of perjury, that all of the statements contained herein are true, correct, and complete to the best of my first hand knowledge and recollection.

- 1.) That on December 13, 2013 at South Central Regional Jail, in Kanawha County, West Virginia, I was arraigned via video arraignment by Magistrate Halloran for the **second** time regarding possession with intent to deliver a **counterfeit** substance case No. 13-F-3707.
- 2.) That this same charge had been dismissed once before on September 23, 2013, case No. 13-F-2929, but was refiled after the WV State Parole Board ruled that I should be released to in patient rehabilitation due to the charges been dismissed.
- 3.) That during my recorded, video arraignment, Magistrate Halloran stated that "he had received a phone call and was told that "The Feds" wanted me for something and that was why my bail was so high"
- 4.) That I was asked, and indeed sign documents requesting counsel to be appointed and wanting a preliminary hearing.
- 5.) That I was **NOT** appointed counsel or given a preliminary hearing for this **refiled** charge within 10 working days.
- 6.) That only after multiple contacts of Mr. Matthew Victor, whom represented the plaintiff previously for this charge, and he having to contact the court to have himself appointed, finally get plaintiff a preliminary hearing for this new charge.
- 7.) That Magistrate Kim Aaron, upon hearing the case at a preliminary hearing held on January 17, 2014, that "what was done to me was indeed **REPREENSIBLE**" and dismissed the new charge **with prejudice**.
- 8.) That plaintiff was still held until January 23, 2014 before being transported to inpatient rehab, after a motion **mandating** that parole officer Jordan McKinnley himself deliver me to the rehab center.
- 9.) That Parole Officer delayed parole revocation hearings from September 10, 2013 all the way until December 14, 2014 in order to "pursue having plaintiff prosecuted federally.

10.) That Parole Officer Jordan Mckinnley colluded with ex-officer Brian A. Lightner (whom was released from Charleston Police Department due to misconduct) and the City of Charleston as well as Magistrate Halloran to illegally detain/falsely imprison and violate plaintiff's due process rights in order to allow "Federal Authorities" time to pursue charges.

11.) That Plaintiff has written the Kanawha County Clerk and also Attorney Matthew Victor in an attempt to obtain the **video arraignment** transcript from December 13th, 2013 Case No. 13-F-3707 to no avail.

12.) That Plaintiff is in possession of all other related documents and proofs regarding this complaint.

Further, affiant sayth not.

Subscribed and Sworn to this 21 Day of July 2015


DIARRA JERMAINE BODDY

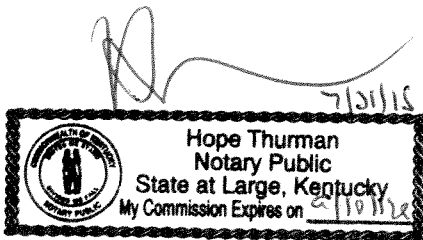
Acknowledgement

Subscribe and Sworn before me this 21 Day of July, 2015

Signature of Notary Public

My commission expires

9/10/16



Jan. 13. 2014 1:21PM
vcl. 13 2/13/14 10AMNo. 1575 P. 5/7
No. 0309 P. 5

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

☐ Out-of-County Warrant

State of West Virginia

Case No. 13F-3707

DIARRA JERMAINE BODDY

XXX-XX-0009

10/20/1970

Defendant (Full Name)

Social Security Number

Date of Birth

9 VEAZEY ST APT-A

E348227

Address

Driver's License / Identification Number

CHARLESTON, WV 25311

304-

City, State, & Zip Code

Phone Number(s)

INITIAL APPEARANCE: RIGHTS STATEMENT

Mag. Ct. Criminal Procedure Rule 5 (5.1 and 5.2 if applicable)

A. GENERAL: EITHER MISDEMEANOR OR FELONY OR BOTH

1. The magistrate has informed me that I am not required to make a statement, and that any statement I do make may be used against me.
2. The magistrate has informed me that I am charged with the ☐ Misdemeanor ☒ Felony Offense(s) of
POSSESSION WITH INTENT COUNTERFEIT SUBSTANCE

and that, if I am later found guilty or plead guilty, the possible penalties are (mandatory minimum penalty, if any, and maximum penalty) 1 TO 15 YRS &/OR UP TO \$25,000.00

3. The magistrate has informed me that I have the right to be represented by an attorney at every stage of the proceeding. If the statutory offense provides for a possible jail sentence, and if I cannot afford to hire an attorney and I meet the financial guidelines, an attorney will be appointed to represent me. I understand this right, and further understand that if I decide to represent myself, I cannot later claim that I was deprived of my right to be represented by an attorney.

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING:

- ☐ (a) I give up my right to have an attorney represent me.
- ☐ (b) I want to hire an attorney to represent me.
- ☒ (c) I want an attorney appointed to represent me. I understand that if I am found guilty, I may be required to reimburse the State for attorney fees even if a court-appointed or public defender attorney is approved to represent me.

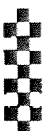
12/13/2013

Date

Defendant's Signature

MCRIST Rev. 03/2015 (previously SCA-M312) Initial Appearance: Rights Statement
JWVSCA Approved: 03/01/2015; Docket Code(s): MM088

Page 1 of 3



Jan. 13. 2014 2:11:21PM 10AM

No. 1575 P. 6/7

Case No. 13F-3707

4. The magistrate has informed me that I have been charged with an offense for which the penalty is life imprisonment, and bail must be set by the circuit court.
5. The magistrate has informed me that I may be released from custody while awaiting further proceedings on the charge(s) stated above if I am able to make bail as follows: \$ 25,000 Cash
- ☐ Cash ☐ Recognizance: (☐ Personal ☐ 10% Cash Bond and 90% ☐ Property (Real Estate) ☐ Surety Company/Bail Bonds person).

If real property is used as security, a justification of surety ☐ IS or ☐ IS NOT required.

6. The magistrate has informed me that I will be given reasonable time and opportunity to talk with an attorney or some other person for the purpose of obtaining counsel or for arranging bail.

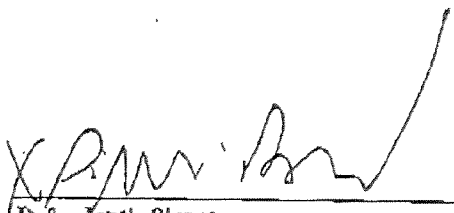
B. MISDEMEANOR CHARGE(S) ONLY

1. The magistrate has informed me that I have a right to plead not guilty, a right to a trial by jury or by a magistrate without a jury, and that if I plead guilty or no contest, I give up my right to a trial.
2. The magistrate has informed me that I have the right to demand a jury trial and, if I want a jury trial, I must let the magistrate court know in writing no later than twenty (20) days from the date of this initial appearance, or if I receive court-appointed counsel, twenty (20) days from the date an attorney is appointed. The magistrate has further informed me that if I demand a jury trial, I may not withdraw my demand for a jury trial if the prosecuting attorney objects to the withdrawal. If I do not demand a jury trial within the twenty-day period, I have also been informed that I give up my right to a jury trial. The magistrate will try my case without a jury, and an appeal of a magistrate court conviction will not entitle me to a jury trial in circuit court. I understand if I have a jury, the jury fee will be assessed against me if I am convicted.
3. (If applicable) The magistrate has informed me that if I have been charged with First Offense Driving Under the Influence of Alcohol in violation of W. Va. Code § 17C-5-2(d)(1)(4), I may be eligible for the DUI Deferral Program. I understand that I have thirty (30) days from the date of my arrest to request to participate in the program as set out in W. Va. Code § 17C-5-2b.
4. (If applicable) The magistrate has informed me that it **SHALL** be unlawful for me to have/possess/own or purchase a firearm, including a handgun or long gun, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(9) if I am convicted of a domestic violence offense such as assault, battery, domestic assault, domestic battery, malicious wounding/assault, unlawful wounding/assault, or any attempt to commit a domestic violence offense involving the use of physical force or threatened use of a deadly weapon; and I am a current or former spouse, current or former intimate partner, parent or guardian of the victim, or have a child in common with the victim, or I am or was involved in another similar relationship with the victim, or currently or formerly cohabited with the victim.

I understand that if I have any questions regarding whether or not this law makes it illegal for me to ship, transport, purchase, or possess a firearm or ammunition, I may consult an attorney.

12/13/2013

Date


 Defendant's Signature

MCRIRST Rev. 03/2013 (previously SCA-M312) Initial Appearance: Rights Statement
 QWVSCA Approved: 03/01/2013; Docket Code(s): MMIRS

Page 2 of 3

Jan. 13. 2014, 1:21PMJAM

No. 1575 P.P. 7/7

Case No. 13F-3707**C. FELONY CHARGE(S) ONLY**

The magistrate has informed me that

1. if I have been charged with a felony offense for which the penalty is life imprisonment, only the circuit court may set and grant bail;
2. I have the right to a preliminary hearing to determine whether or not any felony charge(s) should be bound over for possible presentation to a grand jury;
3. the preliminary hearing shall be held within ten (10) days of my initial appearance if I am in custody, or within twenty (20) days of my initial appearance if I am not in custody (*W. Va. Code § 62-1-8*).

DEFENDANT MUST INITIAL ONE OF THE FOLLOWING THREE CHOICES:

- X (a) I want a preliminary hearing.
- _____ (b) I give up my right to a preliminary hearing.
- _____ (c) I, or my attorney, will inform the court whether I want a preliminary hearing.

12/13/2013

Date

X
Defendant's Signature

I have informed the defendant of the matters set out above. I find that any waiver of rights herein is made knowingly and voluntarily by the defendant.

_____ (initial if applicable) I certify that the defendant refused to initial and/or sign this document at the appropriate places.

12/12/2013

Date

X
Magistrate's Signature

IN THE MAGISTRATE COURT OF

KANAWHA

COUNTY, WEST VIRGINIA

**CRIMINAL
CASE HISTORY**
☐ Felony ☐ Misdemeanor
☒
BOND INFORMATION

Bond set at: _____ Type: _____
 Bond received from: _____
 Date: _____ Mag.: _____
 Rec. #: _____ Amount: \$ _____
 Date pauper's affidavit filed: _____
 Notes/Comments: _____

CASE NUMBER 13F-3707

Defendant, name, address, tel.

POSS. W/INTENT COUNTERFEIT SUBSTANCE

DIARRA JERMAINE BODDY

9 VEAZEY ST APT-A

CHARLESTON

WV 25311

Def. birth date: 10/20/77

DL #: E548227

Complainant name, address, tel.

CPD- B.A. LIGHTNER

PO BOX 2749

CHARLESTON

WV 25301

348-6400

Pros.: _____

Counsel: _____

Court-appointed?: _____

Affidavit of prejudice date: _____

Disp.: _____

Offense:

Offense date: 09/10/2013

W.V. Code: 62A-4-401

Summons date: _____

Sum. app. date: _____

Warrant date: 12/12/2013

Rearrest issued: _____

Case reference: _____

Worthless check amt.: \$ _____

Issuing mag.: HALLORAN

Assigned mag.: COURT-FELONY

Transf. to: _____

Transf. to: _____

Trial mag.: _____

FISCAL DATA

Fine \$ _____
 Court costs \$ _____
 Arrest fee \$ _____
 RJA fee \$ _____
 LET fee \$ _____
 CVC fee \$ _____
 Worthless check notice \$ _____
 Other \$ _____
 Total due: \$ _____

Date	Mag.	Rec. #	Amount
			\$
			\$
			\$

FIRST APPEARANCE / PLEAS—MISDEMEANOR

Arrest date: _____

Arraignment (plea) date: 12/13/2013

Re-arrest date: _____

Date committed: 12/13/2013

Date released: _____

Defendant status: ☐ Pro se ☐ Counsel ☐ Jury trial waived☐ Defendant failed to appear by summons or noticePlea: ☐ Not guilty ☐ No contest ☐ Guilty**Hearing Dates**

Def. P-T motions filed: _____

Pros. P-T motions filed: _____

Jury trial?: _____

Pre-trial conf.: _____

Time: _____

Original trial: _____

Time: _____

Prelim. hearing: 01/17/2014

Time: 1:30 P

Continuances

By: _____ To: _____ Time: _____

By: _____ To: _____ Time: _____

By: _____ To: _____ Time: _____

By: _____ To: _____ Time: _____

By: _____ To: _____ Time: _____

PRELIMINARY HEARING

Preliminary hearing date: _____

Defendant status: ☐ Pro se ☐ Counsel☐ Waiver of preliminary ☐ Probable cause found, bound over to Circuit Court Date to Circ. Ct.: _____☐ No probable cause found, defendant and bond discharged ☐ Bond disbursed to: ☐ Circ. Ct. ☐ Defendant☐ Other: _____ ☐ Surety ☐ Other _____

_____, Magistrate

DISPOSITION ACTIVITY AND JUDGMENT ORDER

Pre-trial dismissal date: _____

Verdict or plea date: _____

Trial: ☐ Bench ☐ Jury ☐ MistrialVerdict or plea: *Dismissed w/ prejudice*

Plea agreement terms disclosed: _____

Sentence is imposed as follows: Fine: \$ _____, Costs & fees: \$ _____, Jail term: _____

Other: _____

So ordered and entered this 17th day of January 20 2014

Kim Aaron

_____, Magistrate

POST-JUDGMENT ACTIVITIESSet-aside hearing date: _____ Status: ☐ Granted ☐ Denied

Appeal filed date: _____ Appearance bond amount: \$ _____

Type: _____

Date bond posted: _____

Appeal forwarded to Circuit Court date: _____

Writs: Execution: _____ Suggestion: _____ Suggestee Execution: _____ Other: _____

CERTIFICATION BY CLERK

I, _____, hereby certify that the above is a true and complete record of all proceedings in the above criminal action.
 filed in my office.

GIVEN UNDER MY HAND THIS _____ DAY OF _____, 20 _____

SEAL

SCA-M305B 6-02

_____, Clerk

Dec. 11, 2013 3:41PM

NO. 0305 P. 1/1

EXHIBIT #1

RECEIVED
DOCKING

2013 DEC 11 P 3:51

SOUTH CENTRAL
REGIONAL JAIL

STATE OF WEST VIRGINIA

PAROLE BOARD

CHARLESTON

ORDER
TO
HOLD CHARGES IN ABEYANCE

WHEREAS, Diarra J. Boddy, Serial Number DOC 26311-2 was convicted of felony crimes as follows:

EFFECTIVE SENTENCE DATE: 5/28/08 JC; C) 8/8/11 JC

CRIME: A) 3rd Offense Domestic Battery; B) Possession with Intent to Deliver Controlled Substances - Cocaine; C) 3rd Offense Domestic Battery

CIRCUIT COURT: Kanawha

SENTENCE: A) 1-5 years; B) 1-15 years CS; C) 1-5 years CC

WHEREAS, Diarra J. Boddy was granted a release on parole from the West Virginia St. Mary's Correctional Center on March 20, 2013 and

WHEREAS, The Division of Corrections placed parole violation charges against you and the Parole Board found you guilty of Charges 1, 2, 3 and 4, not guilty on charges 5 and 6. The Board has decided to hold these charges in abeyance with the following Conditions:

- ☒ You shall be placed on a 6 month improvement period, beginning upon release from incarceration.
- ☐ You shall participate in in-patient treatment as approved by your Parole Officer.
- ☐ You shall participate in out-patient treatment as approved by your Parole Officer.
- ☐ You shall sign a waiver to allow your Parole Officer to check on your treatment status.
- ☐ You shall attend NA/AA, ☐ provide proof to your Parole Officer, ☐ obtain a sponsor.
- ☒ You shall obtain/maintain employment.
- ☐ You shall be placed on Electronic Monitoring
- ☒ Other: To be released to Pincrest Only
- ☒ Other: Subject is to successfully complete the Pincrest inpatient treatment program
- ☐ Other:
- ☐ Other:
- ☒ You must follow all rules and regulations governing your parole.

WHEREAS, If you successfully complete the above conditions, your Parole Officer will notify the Parole Board, and we will reinstate you to parole status. Another opportunity has been granted to you. We would request that you cooperate with your parole officer and address any issues, which may affect unsuccessful parole supervision.

THEREFORE, the West Virginia Parole Board does hereby Hold Diarra J. Boddy's Charges in Abeyance and relinquish jurisdiction of his/her case to Parole Services.

WEST VIRGINIA PAROLE BOARD

Member

Member

Member

Done this 11th day of December 2013.

original: Record Clerk- SMCC
IPO- SMCC
Warden- SMCC
Judy Fitzgerald
DOC file

Parole Officer- Jordan McKinley
Regional Director- Mike Brown
Parolee
Administrator/Sheriff- SCRJ
Attorney- Matthew Victor

Jan. 13. 2014 1:21PM

No. 1575 P. 4/7

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIAWARRANT FOR ARREST

State of West Virginia

v.

Case No(s). 13F-3707DIARRA JERMAINE BODDY

Defendant

POSS. W/INTENT9 VEAZBY ST. APT-A

Address

CHARLESTON, WV 25311**To Any Law Enforcement Officer:**

WHEREAS this court has found probable cause to believe that the defendant, DIARRA JERMAINE BODDY
 did commit an offense or offenses in this County on the 10 day of SEPTEMBER, 2013

previous to the issuance of this Warrant, by unlawfully *[State statutory language of offense(s)]*

§60A-4-401. Prohibited acts A; penalties.

b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

against the peace and dignity of the State.

Therefore, you are commanded in the name of the State of West Virginia to apprehend the above-named defendant and bring that person before any magistrate in this County, to be dealt with in relation to the charge(s) according to law. This arrest warrant is to be executed in the following manner (check one):

☒ Forthwith

☐ Between the hours of 9 a.m. and 4 p.m., Monday through Friday

☐ Other (as specified): _____

Given under my hand this 12 day of DECEMBER, 2013

[Signature]
Magistrate

Executed by: _____ in _____

County, W.Va., on _____
(Date)

W.Va. Code § 50-2-3; Mag. Ct. Crim. Rule 4

SCA-M301/8-95

Docket Code(s): MMWAR

☐ Return
☐ Defendant
☐ File
☐ Prosecutor

Jan. 13. 2014 1:21PM

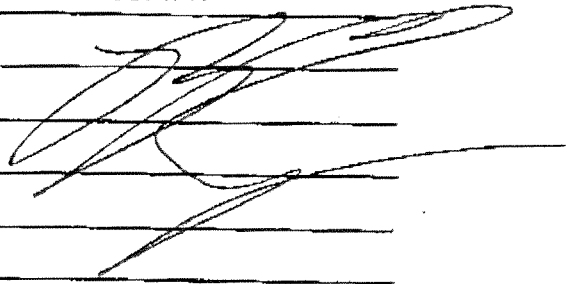
No. 1575 P. 2/7

(Criminal Complaint Continued)

CASE NO. 13F-3707

ON THE ABOVE DATE I OBSERVED A SILVER SEDAN TRAVELING EASTBOUND ON KANAWHA BLVD. EAST. AT WHAT APPEARED TO BE FASTER THEN THE POSTED SPEED LIMIT OF 40 MPH. AS I ACCELERATED MY CRUISER IN EXCESS OF 60 MPH THE VEHICLE WAS STILL PULLING AWAY FROM ME. I THEN ATTEMPTED TO CATCH UP WITH THE VEHICLE TO INITIATE A TRAFFIC STOP WHEN THE VEHICLE SLOWED AND MADE A LEFT TURN ONTO VEAZEY ST. AS I TURNED LEFT ONTO VEAZEY ST. I OBSERVED THE DRIVER DOOR OPEN AND THE DRIVER, LATER IDENTIFIED AS DIARRA BODDY THROW WHAT APPEARED TO BE A FIREARM FROM THE VEHICLE TOWARD THE LEFT (WESTSIDE) OF THE ROADWAY. THE DRIVER DOOR THEN CLOSED AND THE VEHICLE PROCEEDED APPROX 200 FEET BEFORE COMING TO A STOP. BODDY QUICKLY EXITED HIS VEHICLE AND ATTEMPTED TO WALK AWAY. BODDY INITIALLY REFUSED TO FOLLOW COMMANDS UNTIL AFTER BEING TASED. ONCE BODDY WAS PLACED IN HANDCUFF'S I PATTED HIM DOWN WHEN I FELT A LARGE LUMP IN HIS LEFT FRONT POCKET. I REMOVED THE ITEM WHEN I OBSERVED A WHITE ROCK LIKE SUBSTANCE THAT WAS CONTAINED IN A PLASTIC BAGGY THAT APPEARED TO BE CRACK COCAINE. THE SUBSTANCE, WEIGHING 53 GRAMS LATER FIELD TESTED NEGATIVE. THE FIREARM THAT BODDY THREW FROM THE DOOR WAS A 44 MAG SINGLE ACTION REVOLVER, HAWES BRAND. IT WAS LOADED WITH 3 44 MAGNUM CARTRIDGES. BODDY'S WV OPERATORS E548227 WAS REVOKED FOR AN ACTIVE DUL

ONCE AT THE STATION I RAN A CIB. BODDY HAS SEVERAL FELONY CONVICTIONS FOR DRUGS AND DOMESTIC BATTERY PREVENTING HIM BEING ALLOWED TO POSSESS A FIREARM. THIS INCIDENT OCCURRED IN CHARLESTON, KANAWHA CO. WV.



Jan. 13. 2014 1:21PM

No. 1575 P. 3/7

(Criminal Complaint Continued)

CASE NO. 13F-3707

§61-7.7. Persons prohibited from possessing firearms

(b) Notwithstanding the provisions of subsection (a) of this section, any person: (1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; (2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance other than marijuana, a Schedule II or a Schedule III controlled substance as such are defined in sections two hundred four, two hundred five and two hundred six, article two, chapter sixty-a of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than \$5,000, or both.

BEFORE THE WEST VIRGINIA BOARD OF PROBATION AND PAROLE
CHARLESTON, WEST VIRGINIA

IN RE: DIARRA J. BODDY

DOC NO. 26311-2

PAROLEE'S MOTION FOR ENFORCEMENT OF ORDER
OR
MODIFICATION OF ORDER
OR
ASSIGNMENT OF ANOTHER PAROLE OFFICER TO THE PAROLEE
OR
RELEASE FROM PAROLE

Comes the Parolee, Diarra J. Boddy (hereinafter, "the Parolee"), by counsel, Matthew A. Victor, and prays for relief in the form of discharge from parole, or, in the alternative, the modification of the Parole Board's December 11, 2013, ORDER, or, in the alternative, the enforcement of said ORDER.

On December 11, 2013, at the conclusion of the Parole Revocation Hearing, the Parole Board ORDERED a six-(6)-month improvement period for the Parolee, Diarra J. Boddy, with the condition of inpatient drug treatment at Pinecrest, at that time readily available to the Parolee. The Parolee was to be released to Pinecrest only, and the Parole Officer was charged with the transportation of the Parolee to the in-patient facility. See Exhibit No. 1.

Incredibly, one (1) day after the December 11, 2013, Parole Violation Hearing, on December 12, 2013, the Parolee was charged with possession with Intent to Deliver Counterfeit Substance in the Magistrate Court of Kanawha County, Case Number 13-F-3707, i.e. the charges upon which the Parole Board ruled on December 11, 2013, during the Parole Violation Hearing and found the Parolee Not Guilty, and the same charges

which had already been dismissed once, in Kanawha County Magistrate Court, case numbers 13-F-2929 and 2930, filed by the same officer on or about September 11, 2013. Equally incredibly, the Parolee was held in jail on a \$25,000.00 cash-only bond without appointment of counsel until January 13, 2014. Of course, the Parolee could not avail himself of the in-patient treatment opportunity on account of his incarceration and the Parole Officer did nothing to facilitate the Parolee's transfer to Pinecrest since the Parolee was in jail upon the "new" charges.

At the conclusion of the appearance for the preliminary hearing on January 17, 2014, for the "new" felony charge, case number 13-F-3707, the Kanawha County Magistrate presiding over this case dismissed the charges with prejudice. See Exhibit No. 2. Unaware of any other holds or restrictions against the Parolee and barring the indictment against him, the Parolee is now available for treatment / therapy and the fulfillment of the Parole Board ORDER. The twice-dismissed felony charges cannot be re-filed against him pursuant to the Magistrate January 17, 2014, ORDER.

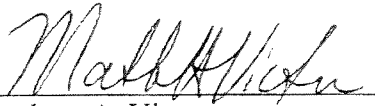
However, since it appears that the Parolee was not presented with an opportunity for treatment and the status of the availability of his placement at Pinecrest cannot be ascertained because the Parolee's prolonged December-2013-to-January-2014 incarceration, the Parolee prays for enforcement of the ORDER with the modification that he be released from South Central Regional Jail and that he self-report to Pinecrest upon the availability of placement to be ascertained by the Parole Officer. The Parolee seeks assignment of another Parole Officer who would pursue the Parole Board Modified ORDER with vigor and dispatch.

In the alternative, the Parolee prays for a Modified ORDER directing the newly assigned Parole Officer to promptly secure services of any other treatment facility, and release of the Parolee from South Central Regional Jail pending the successful completion of the search for the facility suitable for the Parolee's rehabilitative needs.

Finally, because the Parole Board's intent to rehabilitate the Parolee was thwarted by the State's action of seeking criminal prosecution for the same charges upon which not only the Parole Board but also two Magistrates acted in the manner favorable to the Parolee, the latter seeks release from parole, inasmuch as the Parolee believes the lack of initiative in fulfilling the Parole Board ORDER will mar any and all of his rehabilitative efforts as long as he remains under the control and supervision of the West Virginia Division of Corrections.

Should the Parole Board decide to hold a status / evidentiary hearing upon this Motion, the Parolee reserves the right to present evidence in support of his Motion.

Respectfully submitted,
Diarra J. Boddy
By Counsel


Matthew A. Victor
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Jan. 13. 2014 1:20PM

No. 1575, P. 1/7

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

HRg TBA Parole Violation 26311-2

v.

BODDY, DLARRA JERMAINE

Case No. 13F-3707

Defendant

9 VBAZEY ST. APT A CHARLESTON WV 25311

Address

235-29-0009

E548227

Social Security No.

Driver's License No.

10-20-1970

Date of Birth

Agency Case # 113091022
☐ Misdemeanor
☒ Felony
CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief On or about 10 SEPTEMBER 2013 in KANAWHA County, West Virginia, in violation of W.Va. Code (cite specific section, subsection, and/or subdivision as applicable)

§60A-4-401 POSSESSION WITH INTENT COUNTERFEIT SUBSTANCE the defendant did (state statutory language of offense)
 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to: (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

I further state that this complaint is based on the following facts: SEE ATTACHED

Matthew Victor

The defendant is / has:

- ☐ The victim's spouse or ex-spouse
☐ A parent or guardian of the victim
☐ A child in common with the victim
☐ Living with the victim or had lived with the victim
☐ A person who may be classified as a spouse, parent or guardian to the victim
☒ None of the above connections to the victim

Continued on attached sheet? ☒ Yes ☐ No

Complainant (who appears before magistrate):

B.A. LIGHTNER

Name

P.O. BOX 2749

Address

CHARLESTON WV 25330

304-348-6400

Telephone

PATROL DIVISION

Office or title, if any

Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

- ☒ Probable cause found
☐ Summons issued
☒ Warrant issued
☒ Warrantless arrest
☐ No probable cause found

Magistrate Signature

Date

12/12/13

	Return
	Defendant
	File
	Complainant
	Prosecutor